

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 77 OF 2007.

Philip Fernandes.	... Petitioner.
Versus.	
Mrs.Clara Toscano.	... Respondent.

Shri H.T.Pawar for the Petitioner.

Shri P.N.Shah for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 26th April, 2007.

P.C.:

1. I have heard the submissions of the learned Advocates appearing for the parties. The Petitioner is the tenant and the Respondent is the landlady. A suit for possession was filed by the Respondent against the Petitioner in the Court of Small Causes. The said suit was filed on the grounds of default, carrying out additions and alterations of permanent nature in the suit premises, causing nuisance and annoyance and for committing breach of the terms and conditions of tenancy. The trial Court dismissed the suit. In an appeal preferred by the Respondent, the Appeal Bench of the Court of Small Causes has passed a decree for possession on the ground of arrears of rent i.e under section 12(3)(a) of the Bombay Rents Hotel and Lodging House (Control) Act, 1947 (hereinafter referred to as the said Act of 1947).

2. Initially a notice dated 19th August 1980 was issued by the Respondent to the Petitioner. Thereafter on 19th June 1984 a notice of demand was issued by the Advocate for the Respondent to the Petitioner calling upon him to pay the monthly rent of Rs.45/- together with Rs.5/- as taxes per month. Demand of arrears was for the period from 1st September 1983 to 31st March 1984. There is no dispute that the said notice was served to the Petitioner. A corrigendum was issued to the said notice for correcting the name of the Respondent. It is an admitted position that within a period of one month from the date of receipt of notice, the Petitioner did not pay the arrears as demanded or did not apply for fixation of standard rent.

3. The Appeal Court found that as the Petitioner had not complied with the notice of demand and had failed to apply for fixation of standard rent within the time provided by law, the Petitioner was not entitled to protection of section 12(3)(b) of the said Act of 1947. The Appeal Court found that as the Petitioner did not deposit the entire arrears together with simple interest at the rate of 9% and costs of the suit on or before the first date of hearing, the Petitioner is not entitled to the relief against forfeiture.

4. The submission of the learned Advocate for the Petitioner is that as the Petitioner had deposited the entire arrears on the first date of hearing, in view of the decision of the Apex Court in the case of Ibrahim Abdulrahim Shaikh v/s. Krishnamorari Sripatlal Agarwal (AIR 1994 SC 1609), the decree for possession could not have been passed. He submitted that a part of the amount demanded by notice i.e. Rs.5/- p.m. was not payable by month and therefore, there could not have been a decree under section 12(3)(a) of the said Act of 1947. He placed reliance on the decision of the learned Single Judge of this Court in the case of Smt.Shanta A.Vaidya v/s. B.G.Bhise and others (1988 Mah.R.C.J. page 515).

5. The decision in the case of Ibrahim Abdulrahim (supra) will not help the Petitioner. In the case before the Apex Court, the tenant had deposited all the arrears as demanded within the period of one month from the date of service of notice and thereafter had continued to deposit the rent regularly. In fact in paragraph 3 of the said decision, the Apex Court has reiterated the view taken in the case of Harbanslal Jagmohandas v/s. Prabhudas Shiv Lal (1976) 3 SCR 628. In paragraph 3 the Apex Court held thus:

"The landlord put the tenant on notice of

his negligence and to make payment thereof within one month from the date of the receipt of the notice and on disputation is enjoined to seek remedy under S.11(3) for determination of the standard rent or permitted increases. If he fails to dispute and omits to pay the arrears within one month from the date of the receipt of the notice, he became liable to be evicted under Section 12(3)(a) of the Act."

In the present case, the Petitioner did not pay the amount of arrears for a period of more than six months within a period of one months from the date of service of the notice of demand. He did not apply for fixation of standard rent within one month. Therefore, the deposit of arrears on or before the first date of hearing of the suit was of no consequence. In view of the settled position of law it was not open for the Petitioner to raise dispute regarding standard rent only by filing a written statement. There is no merit in the contention that taxes demanded at the rate of Rs.5/- per month were not payable by month. No such contention was raised before the trial Court. In the circumstances, the Appeal Court was justified in passing a decree on the ground of default. No case is made out for interference in a limited revisional jurisdiction and

hence the Civil Revision Application is rejected.

6. A prayer is made that the decree for possession shall not be executed for a reasonable time to enable the Revisional Applicant to approach the Apex Court. The said prayer is opposed by the learned Advocate for the Respondent. Considering the facts and circumstances of the case, notwithstanding rejection of the Civil Revision Application, the decree for possession shall not be executed till 31st August 2007 subject to condition of the Revision Applicant filing in this Court an undertaking stating therein that he will not create any third party interests and will not part with possession of the suit premises. The undertaking to be filed within a period of four weeks from today.

Judge.